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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,996	03/11/2004	Lixiao Wang	S63.2-7182-US02	6285

490 7590 09/19/2007
VIDAS, ARRETT & STEINKRAUS, P.A.
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EXAMINER

DANIELS, MATTHEW J

ART UNIT	PAPER NUMBER
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1732

MAIL DATE	DELIVERY MODE
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09/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/797,996

Applicant(s)

WANG ET AL.

Examiner

Matthew J. Daniels

Art Unit

1732

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 18 and 23-26.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See the enclosed response to arguments.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Response to Arguments

1. Applicant's arguments filed 12 September 2007 have been fully considered but they are not persuasive. The arguments appear to be on the following grounds:
 - a) Applicants have provided an overview of high density polyethylene. Gregorian provides a material that is already high density.
 - b) Applicants provide a different method for making the balloons using a thermoplastic material.
 - c) Crocker provides nondistensible bands, and PTFE is not suggested. Gore does not disclose any expansion limiting characteristics. The benefit of making the combination is not readily apparent.

2. These arguments are not persuasive for the reasons set forth previously, and additionally for the following reasons:
 - a) Evidence presented after final rejection is directed at the same claim rejections set forth previously, and is not being entered. As set forth previously, the term "high density" is not differentiated in the specification by any material characteristics and it is submitted that the references would provide a high density polyethylene.

Additionally, this appears to be a genus/species argument, and it is submitted that the claimed genus of polyethylenes is sufficiently small that the particular claimed species would have been obvious over the disclosed genus of "polyethylene".

Additionally or alternatively, in view of the suggestion to use a polyethylene which is nondistensible, a high density polyethylene would have been obvious to the ordinary artisan.

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One seeking to select to provide a non-distensible tube would certainly not choose waxy, low density amorphous polyethylenes to achieve that goal.

b) There is no claim to any step of making the material. This argument is not commensurate with the scope of the claim.

c) Crocker's suggestion to use a nondistensible material cannot be analyzed in a vacuum. The suggestion to use a nondistensible material must be analyzed in the context of the reference as a whole, namely that the nondistensible material is to be used in a medical device formed from biocompatible materials and used in vascular applications. It is submitted that use of other distensible materials having biocompatibility and known to be useful in vascular in vascular applications would have been obvious, and the Gore reference is one such material. PTFE and ePTFE are conventional materials for use in the vascular arts, and would have been an obvious choice for use in a balloon catheter.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Daniels whose telephone number is (571) 272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJD 9/15/07



CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER